IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

L.P.A No. 1025 of 2002

Date of decision : January 30, 2007.

Union of India & others

.....Appellants

through Mr.Kamal Sehgal, Advocate

v.

Ex.Hav.Kanwar Singh,No.14550669 of EME

.....Respondent

through Mr.Sudhir Aggarwal, Advocate

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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By way of this Letters Patent Appeal, the Union of India impugns the judgment of the learned Single Judge, dated 26.4.2002, granting disability pension to the respondent.

The respondent was enrolled in the Indian Army on 4.1.1983, after being found fit in all respects. In the year 1996, the respondent reported sick and was admitted to Military Hospital, where he was diagnosed with Diabetes Mellitus (DHA Failure)-250. He was placed in medical category EEE and was eventually discharged from military service on 28.7.1998. At the time of his discharge, his disability was assessed at

20%. His request for disability pension was turned down on the ground that his disorder was constitutional in nature, unrelated to the service and neither attributable nor aggravated by military service. The rejection was communicated to the respondent, vide letter, dated 16.4.1999.

The respondent filed an appeal, which was dismissed on 7.11.2000, and led to the filing of a civil writ petition. The learned Single Judge, vide the impugned judgment, allowed the writ petition and set aside the orders, rejecting the request for disability pension to the respondent. A direction was issued to the appellants to release disability pension to the respondent with effect from the date, he was invalided out of service.

Counsel for the appellants has laid challenge to the judgment of the learned Single Judge, primarily on the ground that the respondent's disorder, namely, Diabetes Mellitus (DHA Failure)-250 was constitutional in nature and could not have been detected at the time he entered military service. It is contended that as the medical report had opined that the disorder was neither attributable to military service nor aggravated as a result thereof, the opinion of the medical board should prevail and, therefore, the learned Single Judge erred in allowing the writ petition.

We have heard learned counsel for the parties and perused the paper book.

A perusal of the impugned judgment reveals that the learned Single Judge did not discard the opinion of the medical board but held, after a perusal of rule 14 of the Entitlement Rules, 1982, that the medical board failed to indicate in its report that the disease could not have been detected at the time of enrollment or that military service had not attributed towards onset nor did it affect the course of the disease. It would be necessary to

notice rules 14 and 9 of Appendix II of the Entitlement Rules for Casualty Pensionary Awards, 1982, which reads as under :-

> "14. (a) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously :-
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> (i) That the disease has arisen during by the period of Military Service, and
>
> (ii) That the disease has been caused by the conditions of employment in Military Service.
>
> (b) If medical authority holds, for reasons to be stated that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the conditions of military service did not contribute to the onset or adversely affect the courses of disease, entitlement for casualty pensionary award will not be conceded, even if the disease has arisen during service.
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> (c) Cases in which it is established that conditions of Military Service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.
>
> (d) In case of congenital, hereditary, degenerative and constitutional disease which are detected after the

individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military service.

9. ONUS OF PROOF

The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."

Taking into consideration the provisions of rule 14 of the Entitlement Rules, 1982, as also the aforementioned rule, we find no infirmity or illegality in the judgment of the learned Single Judge, awarding disability pension to the respondent. Consequently, the present appeal is dismissed.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

January 30, 2007.
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